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Meso-Corporatism and Labour Conflict Resolution

by

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Meso-Corporatism and Labour Conflict Resolution

The theory and its application to the analysis of labour judiciaries in France, Germany, Great Britain and United States.*

The aim of the paper will be to discuss the concept of meso-corporatism in order to analyze institutions of dispute resolution for employment conflicts. Collective bargaining and its relation to employment conflict resolution is, thereby, conceptualized with respect to recent approaches in political science studies which overcome pluralist notions of steady change in intermediation processes; instead, cooperation of the industrial partners and the state are analyzed in terms of stable corporatist arrangements. Starting with a discussion of elements of a definition of meso-corporatism, extracted from recent theorizing on corporatism, the paper then applies the concept in a comparison of policies of employment protection and respective legal institutions, i.e. arbitration procedures, industrial tribunals and labour courts.

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1) On Meso-Corporatism

In a formal account, meso-corporatism is characterized by tripartite structures which involve regional or sectoral professionals of the state and interest associations; meso-corporatism can be distinguished from macro-corporatism on national level and from micro-corporatism on local level. Recent studies on corporatist relations of state and society seem to express an increased concern with meso-corporatism.

On the one hand, theoretical discussions of the impact of centralized, but also decentralised corporatist policy-making on democratic structures try to overcome the prevalence of mere descriptions of formal networks between societal and state institutions. The democratic structure of society and its relation with the state are now at the center of corporatist theorizing especially in challenging pluralism as the paradigm in political science research (cp. Schmitter 1983 and 1984 and Offe 1984). Although meant to be descriptive, the new theoretical debates of corporatism have a clear normative undercurrent. If "association" is put forward as a societal mechanism of integration together with community, market and state (Streeck/Schmitter 1984) it hardly remains non-normative.

In this context, we still can reconstruct the idea of corporatism as an organisational principle of society which expresses society's desire for Gemeinschaft i.e. the wish not only to form

an abstract system of interacting monads but also to form an integrated entirety. Some philosophical accounts of corporatism sometimes called it the organic structure of society (Fichte) whereas other philosophical analyses stressed the transitional character of corporatist arrangements while calling them 'external state' within society (on Hegel's concept of corporatism as 'external state' see Rogowski 1983).

On the other hand, recent theories of the state are redesigning relationships of state and society. We find analyses of guidance capacities of the modern state with regard to non-hierarchical models of relationships of state and independent bargaining systems which are characterized by a structure of self-reference and which resist direct state intervention (see Willke 1983, p.44-47 and 128-144. Willke's concept is closely linked to Luhmann's sociology). Empirical studies of those independent corporatist arrangements are, subsequently, narrowing their focus from national to sectoral, regional or local bargaining including networks of the welfare state and associations on this level (see for Britain Cawson 1982 ("fragmented state") and Harrison 1984).

To a certain degree, the shift to meso-corporatist studies seems also a theoretical response to compelling changes in current politics. The abolition of "social contract" policies on national levels in major Western countries in the 1980ies creates an incentive for the theory of neo-corporatism to look to lower strata of the political process. It has already been suggested to

talk more of a post-corporatist state (Lewis/Wiles 1984 for the British case).

But corporatism is conceived of as a too narrow concept if it is called a model which mainly fits industrial countries at their peak (see Roger Benjamin 1980: 68-72). On the one hand, stable corporatist arrangements can be observed in pre-industrialized societies; in fact, the politico-economic system of feudal societies is most often described in terms of corporatist relations of the state and guilds (on the use of corporatism in historical studies see Nocken 1981). On the other hand, one might envisage corporatist structures in post-industrial societies. If it is true, as Benjamin views it, that post-industrial societies will be shaped by local decentralised governments it might be possible to predict organised network structures at this level. Because these structures often evolve from existing networks, we can already analytically search them in decentralised corporatist arrangements; and this creates a further reason to focus study of corporatist arrangements on the meso-level of society where the future power centers may well be located.

Associations as intermediaries between state and society were always -- empirically as well as theoretically -- central objects of corporatist studies. But research concentrated until recently on the national politics of these associations and their participation in national policy-making (especially incomes policy) and, surprisingly, it still seems rather a new discovery

to these studies that processes of corporatist intermediation occur not only on national levels where so-called 'peak' associations influence policy formulation. Studies on policy implementation processes revealed complex network structures between state agencies and interest associations on a middle level of 'region', industrial sector, single 'state' or 'local governments' (see only Bardach 1977; Scharpf et al. 1976) which can provide interesting examples for a reconstruction of stable meso-corporatist arrangements.

Research on intra-organisational structures of associations, once accused of being the 'Achilles Heel' of neo-corporatist studies (Teubner 1979: 497), seems presently a rich field (1). Besides studies on membership developments and shop floor influence, attention was given to the service activities of associations (research on legal advice provided by associations is discussed in Gawron/Rogowski 1982). But research in this field is still occupied by assumptions of different organisational interests of leadership and of rank and file which are used to distinguish the political function of the association from its service function towards their members (for a general account see Olson 1971; see also the research design of the project on business interest organisations in Streeck/Schmitter 1981). But the more we know about the two functions the more we can see that both functions are political functions and that they are, in fact, exchangable associational tasks.

The political exchange at the top level, on the one side, can only function if leaders can offer internal control of members in exchange for political benefits on the legislative level. On the other side, exchange processes with the political system do not only occur at the top level. The servicing of members is not an apolitical intra-associational affair. Middle-level representatives of associations participate in administering the welfare state, usually as so-called lay members in administrative or judicial decision-making procedures. A constant exchange with welfare agencies also occurs when officials of the association act as representatives of their members in applying for welfare benefits and enforcing statutory rights; these exchanges might result in network relations between associations and state agencies. Sometimes associations can even take over implementation of welfare policies; through formal delegation of decision-making power to autonomous configurations of interest groups, the state might even retreat from control in specific social fields.

Exercise of services for members, therefore, often has to be called a political activity of associations. The political exchange at the middle level of politics creates continuous professional relationships of administrations and associations which, ideally, are designed to balance public interests and member interests of associations. But it is an empirical question wether, in fact, the inner dynamics of meso-corporatist arrangements allow the balance between public and associational

interests or wether they serve a new interest of this social configuration and its professional and bureaucratic members.

We can relate our definition of meso-corporatism to more general discussions; von Beyme's recent definition of corporatism summarizes the general debate:

"The tripartite relation of the state and two conflictory mighty interest groups suggests to talk about corporatism only when the state is not only negotiating with one association which holds representational monopoly ... Corporatism -- authoritarian as well as liberal -- means the attempt to conciliate conflictory interests with the support of the state."(v.Beyme 1984:224. Translation by R.R.)

The tripartite character, the intermediation of state and group interests and the conciliatory function of the arrangements are the three aspects of corporatism which v.Beyme emphasises. We can add an element which Schmitter's well known definition stresses: the intra-organisational aspects of control in exchange for a representational monopoly of the association (Schmitter 1979: 13). Organizational consequences of neo-corporatist cooperation for associations are functional specification, professionalization, formalization and administrative rationalization (Streeck 1982). But for our discussion of a definition of meso-corporatism we have to go beyond intra-organisational analyses and switch our attention to the increased political activities of associations on the middle level of politics. We can follow studies on welfare corporatism which analyze corporatist relations within the context of social policy and its implementation; and it is the process of

incorporation which becomes important in this respect (see Harrison 1984). Our thesis is therefore: It is constitutive for meso-corporatist arrangements that professionals of associations take an active part in the functioning of welfare agencies in order to maintain service functions for members; through participation in welfare corporatism associations gain influence in other social fields where direct associational control is lacking. In exchange, the welfare state absorbs political criticism on its limits through integration of professional critics and thereby conciliates antagonistic interests. In meso-corporatist arrangements, associations act politically only in the formal sense of representation; looking at actual decision-making processes with participation of associational representatives, a depoliticisation of issues can be observed as the main effect of the incorporation of interest groups.

In the following, we will apply the concept of meso-corporatism in order to analyze in two ways employment protection. First, there will be a discussion of political processes surrounding the establishment of labour conflict institutions. Second, we will compare organizational structures of labour conlict institutions with respect to the different degrees of meso-corporatism.

2. Meso-Corporatism and the Establishment of Labour Conflict Institutions

Similar to the distinction of macro-, meso- and micro-corporatism research on Industrial Relations distinguishes between national, regional/sectoral and local collective bargaining (2). The importance of each level varies according to country. In Germany, for example, the industry-wide bargaining (sectoral or regional level) is most important for the determination of wages or hours of work (the recent battle over the 35 hour week was carried out at this level). By contrast, in the United States most collective bargaining is done at company level between local unions and management (with some important exceptions in steel industry and automobile production).

It seems generally true that centralized bargaining, on the one hand, allows to include a wide variety of politically abstract issues but, on the other hand, it often expresses a compromise with a rather small common denominator. Only baselines are fixed through central bargaining and side agreements on enterprise level are necessary to regulate details and specific problems (on the relation of industry agreements and enterprise agreements see Schmidt/Neal 1984: 12-111, p. 42/3).

Employment protection, i.e. especially protection against dismissals, does not automatically become a subject of collective bargaining. In fact, it is often neglected in collective

bargaining because there are no unions or because the bargaining partners negotiate exclusively about collective matters; employment protection, then, has to be established by the state through labour law, sometimes on request of the unions. But collective bargaining creates the background against which employment policies are carried out. This is not only true for national collective bargaining. Also on the micro-level of collective bargaining, where negotiations of management and shop stewards are institutionalized in grievance procedures, these procedures serve as filter institutions for labour courts in those countries which have established separate judiciaries for labour conflicts.

These official labour conflict institutions, besides arbitration at company level, function on a meso-level, i.e. its jurisdiction normally covers a certain region. They are created to implement employment protection law, in almost all cases with institutionalized participation of interest groups. In the following, we shall illustrate the operation of meso-corporatist arrangements with regard to policies and institutions of daily practice of employment conflict resolution in France, West Germany, Great Britain and the United States.

The oldest employment protection policy can be found in France. Already under the reign of Napoleon Bonaparte the first Conseil de Prud'hommes (1806) was established on request of the Chambre de commerce in Lyon. Its members at that time were exclusively

employers. It took until 1848 to create a bipartite bench with an equal number of employer and employee members. The bipartite structure remains until today and is characteristic of the French labour courts. They are public courts with an exclusive membership of four lay judges from each side who are presently elected for five years (A reduction to three lay judges from each side "est prevue" (Javillier 1982: 296)). In 1981, the Socialist government created an advisory body, the Conseil superieur de la prud'homie, which is located at national level and which has a tripartite structure including members from unions, employer associations and the Department of Labor (see Javillier 1982: 293).

The coverage of workers by these courts was gradually extended. Nowadays only public workers are excluded. Each French labour court is still created on special request by a separate government decree and

> "has its seat in a town of some size and importance, and its jurisdiction covers a specified area around that town." (Blanc-Jouvain 1971: 17)

Until recently, the French labour court system worked under the principle of specific territoriality which meant that only 40 per cent out of the population lived within areas covered by conseils (Napier 1979: 273). In 1979, the principle of general territoriality was enacted which is now supposed to guarantee that all French workers, regardless of their place of work, have access to a conseil. Jurisdiction is still only provided for individual

employment conflicts and not for collective disputes which involve trade unions. There exist presently about 270 conseils (Moritz 1984: 74).

The French unions made several proposals to extend jurisdiction to collective issues. After the victory of the Socialist party in 1981 the unions felt strong enough to ask for direct appointments of the judges but so far jurisdiction on collective interests as well as direct appointments have not been granted. Already under the present system 70 per cent of the worker conseillers are affiliated with the unions (Napier 1979: 275).

Those critical of the conseils call them an institution of class collaboration which has its function in "banalisation des pratiques conflictuelles" (Cam 1981: 209). The allegation is that smaller and medium sized employer still ideologically dominate the court and the bench; but conflicts of the industrial sector cannot be adequately solved in a court which is dominated by values of the commercial sector. The old French employer ideal of a personally responsible "patron" does not answer the needs of functional management or company management by co-determination (Cam 1981, chapitre 11).

In general, the French Labour courts can be called a product of local corporatist arrangements. The conseils are organisations of the town; its locally elected "wise men" are concerned with conciliation rather than class struggle. It took until recent

reforms to abolish exclusive local financing and to have the national government take over a share of the financial burden.

French labour courts had some, but only a limited impact on the German situation in the 19th century; a general system of labour courts developed only at the end of a century when Bismarck's authoritarian policy against the Socialdemocratic Party was accompanied by the establishment of basic welfare measures.

Labour courts of the present day were introduced in 1926. The labour courts replaced earlier "Industrial Courts" (Gewerbegerichte, established 1890) and "Commercial Courts" (Kaufmannsgerichte, established 1904) which had limited jurisdiction and did not cover agricultural workers. These trade courts had a tripartite bench with, like the French conseil, elected lay members from the employers' side and the employees' side and one professional judge. From the beginning of the Weimar Republic, socialist lawyers -- among them Hugo Sinzheimer and Otto Kahn-Freund -- were striving for a legal framework of labour relations generally known as the "economic constitution" (Wirtschaftsverfassung) (3). Labour law, among other laws, was concerned with an infrastructure of legal institutions which reached from the shop floor up to the national level thereby paralleling the hierarchical structure of the political decision-making process (see Ramm 1971: 91). One of these new institutions of the 1920ies was the Labour Court which was established in 1926 after intensive political debates (Michel 1982). The labour courts

of 1926 kept a tripartite bench; but its lay members, from then on, were not elected but nominated from lists provided by the regional offices of the national union and employer federation. Labour Courts were empowered to deal with all problems which could arise out of the employment relationship; access was guaranteed to all types of workers except for civil servants. And labour courts had jurisdiction in collective labour law issues i.e participation rights of works councils on the shop floor level. Unions and works councils could from now on enforce their statutory rights through these new labour courts.

In the Third Reich the courts jurisdiction on collective labour law issues was immediately abolished but individual labour law cases were left to the labour courts so long as they did not fall under the jurisdiction of newly established "Courts of Social Honour" (soziale Ehrengerichte) which controlled mainly employer conduct (see Spohn 1982: 204/5); the "German Labour Front" (Deutsche Arbeitsfront) replaced trade unions and employer associations (on the early history of the labour courts in the Weimar Republic and during the Nazi period see Wunderlich 1946).

Labour courts were among the first institutions after the war to regain their pre-fascist jurisdictions. They steadily enlarged jurisdiction during the 1950ies; in particular the Federal Labour Court increased its legal competences by own decision-making leading to the allegation that German labour law, especially in collective matters, was turning to case law rather than resting on

"sound" statutory law (see only the critical appraisal of Blanke et al. 1975, Vol. II, pp. 248/9. Daeubler 1982, Vol. I, p.27 calls this tendency "judicial domination" (Richterherrschaft)). Labour courts gained further jurisdiction on collective issues by amendments to major co-determination laws in the 1970ies (Betriebsverfassungsgesetz 1972; Mitbestimmungsgesetz 1976). Since the enactment of the "Dismissal Protection Act" (Kuendigungsschutzgesetz) of 1951, which continued the tradition of a 1926 act protecting white collar workers, there occurred only piecemeal reforms in the individual labour law area. The "Labour Law Consolidation Act" (Arbeitsrechtsbereinigungsgesetz) of 1969, amongst other statutes, led to the clearing up and slight extension of coverage and of notice periods in German employment protection law.

If we compare the British and the German development we see that Britain seems to follow the continental course with a time gap of almost 50 years. The first Industrial Tribunals with only limited jurisdictions were established by the Industrial Training Act 1964. But pressure for further regulation of industrial relations remained leading to the establishment of the famous investigatory Royal Commission, chaired by Lord Donovan. Its Report, released in 1968, contains a careful description of the state of industrial relations in the middle of the 1960ies. Its conclusion became famous:

"Britain has two systems of industrial relations. One is the formal system embodied in the official institutions. The other is the informal system created by the actual behaviour of trade unions and employers' associations, of managers, shop stewards and workers."(Donovan Report 1968, par. 1007, p.261)

Considering the effective working of the informal system, the Donovan Report argued that legislative intervention would cause more disruption than order. Nevertheless, it called for changes with regard to industrial sectors with no effective regulation by collective bargaining. And in "Chapter X", the Report proposed new "Labour Tribunals" which would concentrate the various jurisdictions on individual employment matters within one legal body

"to make available to all employers and employees, for all disputes arising from their contracts of employment, a procedure which is easily accessible, informal, speedy and inexpensive." (Donovan Report 1968, par. 572, p. 156)

This Labour Tribunal would be obliged to seek settlement before adjudication; and as much as possible cases would be deferred to already existing voluntary procedures. Collective disputes would be kept outside the Tribunals and would be left to the collective bargaining system.

The political reforms after Donovan were far less cautious than the Report suggested. Massive state interventions were first proposed by the Labour Government's White Paper "In Place of Strife" (1969) and then -- with a different impetus against the unions -- carried out by the following Conservative Government in

its Industrial Relations Act (IRA) of 1971. The IRA established a tripartite "National Industrial Relations Court" neglecting the warnings of the Donovan Report not to overburden labour courts with collective labour law issues. Repressive actions of the court against strikers clearly increased the already existing hostility of the British labour movement against courts and it contributed to the final defeat of the IRA in 1974 (See Crouch 1982: 75-79; Farmer 1974: 74-82; and on the attitudes of general courts towards industrial relations see Wedderburn 1978 and Griffith 1981, ch. 3). The unions refused to participate in implementing the IRA and, subsequently, asked their lay judges to withdraw from the tribunals. The experience with the IRA clearly revealed the social limits of law as a regulatory instrument in industrial relations (See Weekes et al. 1975).

In a general analysis of the development of British labour law, H.Collins (1982: 81-83) distinguishes three stages which he also calls three "types" of labour law. The first phase is characterized by the creation of a "floor of rights" for workers against exploitation. Factory Acts and Truck Acts occur in this phase. The second phase is called pluralist labour law which is concerned with regulations of trade unions and collective bargaining in order to protect autonomous regulation of the workplace by the industrial partners. This type of labour law was favoured in the Donovan Report. In a third phase, Collins then observes the rise of <u>corporatist labour law</u>. This aims at

"juridicalisation" of labour relations and order in industrial relations through state intervention. Unfair dismissal legislation is a prime example of corporatist labour law for Collins because "it is designed to subject a considerable portion of the realm of managerial discretion to judicial control" (Collins 1982: 83). But corporatist labour law creates problems for courts and tribunals; they are not equipped to intervene in industrial relations and therefore are more likely to abstain, follow established managerial norms in defining 'fair' dismissals or retreat to proceduralism.

Collins view of the rise of corporatist labour law as a means of legalizing labour relations seems to be supported by the legislative development since the middle of the Seventies. The new era of "social contract" policies of the Labour Government continued statutory employment protection from 1974 on. The "Trade Union and Industrial Relations Act" of 1974, which repealed the 1971 IRA, kept provisions on unfair dismissal protection almost unchanged. The Employment Protection Act of 1975, which introduced an obligatory conciliation procedure carried out by the separate government agency 'Advisory, conciliation and Arbitration Service (ACAS), and the Employment Protection (Consolidation) Act of 1978 which now combines all unfair dismissal provisions stabilized the legal foundation of the development of the Industrial Tribunal System. And the Conservative Employment Acts of 1980 and 1982 and the Trade Union Act of 1984 did not seriously challenge this

development (see Dickens et al. 1984); few restrictions were put on the Industrial Tribunal's, although the main emphasis of conservative reforms lies again with symbolic politics in collective labour relations and less with employment protection.

If we turn to the United States the picture changes. There have been some discussion among American labour lawyers about practices of "hire and fire" at "free will" of the employer (see e.g. Summers 1976). But in general, the principle of dismissing a worker "for good reasons, bad reasons, or no reason at all" is still valid. But limitations on managerial prerogatives can be established through collective bargaining agreements; although presently only 20 per cent out of the American work force is unionized the principle of "exclusive representation" of all members of the bargaining unit, regardless of being unionized or not, has the effect that about 25 to 30 per cent of the American workers are covered by collective agreements. 80 per cent of these agreements provide that employer may dismiss employees only for a "just cause"; disputes falling under this or any other clause of the agreement might be handled in formal grievance procedures which are established in 95 per cent of all agreements (see St. Antoine 1984: 266/7. Also Rogowski 1983: 201-207). Final and binding decisions are reached in these procedures through arbitration. The state and its judiciary acknowledge the binding character of arbitration awards; the Supreme Court decided against judicial review of arbitration awards except in cases of actions

of the arbitrator which are not covered by the arbitration clause of the agreement (see the so-called "Steelworkers Trilogy": 363 U.S. 564, 574, and 593 (1960)). And the state supports private arbitration through its Federal Mediation and Conciliation Service which provides lists (or panels) with names of arbitrators from which the parties can choose their arbitrator. The same service is also provided by the private American Arbitration Association.

Statutory measures for employment protection are rare in the United States; since the New Deal of the 1930ies, special protection for union members has been guaranteed by the National Labor Relations Board ("unfair labor practices"). And in cases of discrimination in employment because of race, sex or age the government agency Equal Employment Opportunity Commission can be mobilized.

In general, the United States show few corporatist arrangements in the employment field outside companies. But through local collective bargaining at company level, formal and stable procedures of collaboration at least in bigger companies are installed (usually called grievance procedures) which can provide employment protection for some industrial sectors.

We can conclude from our brief historical sketch that it is not just short term politics of either Socialist or Conservative governments at work when institutions of judicial remedy in employment relations are introduced. The dichotomy of abstentionism and interventionism, sometimes attributed to incomes

policy on the interventionist side and traditional Industrial Relations politics on the abstentionist side (see Wedderburn 1984), is everywhere decreasing in the employment protection policy field except for the United States. In general, labour courts are not designed to act as a substitute for collective bargaining but rather to extend protection in fields where collective bargaining does not exist or where it shows deficiencies. If state intervention takes the form of institutionalized meso-corporatism in labour courts, interest associations are able to extend influence on regulation of employment relations even beyond collective bargaining.

In the following we will analyze degrees of meso-corporatism in the organizational structure of labour adjudication in our four countries. We can use our historical sketches for tentative hypotheses: Germany and Britain are likely to have high degrees of meso-corporatism; France should be characterized by local corporatism whereas the United States should show a low degree of meso-corporatism in labour adjudication.

3. Organizational Structure and Success Rates of the Industrial Tribunal, of the German Labour Court, of the Conseil de prud'hommes, and of the Arbitration hearing

Courts are organizations with a bureaucratic structure, personnel and a hierarchical decision-making process. We can start our comparison with an overview of levels of judicial dispute resolution which also are levels of review or appeal.

Chart 1: Levels and organizations of the judicial dispute resolution process of individual labour conflicts

dispute phases	Great Britain	West Germany	France	United States
conciliation	Advisory, Conciliation and Arbitration Service (ACAS)	labour court: conciliation procedure	Conseils de Prud'hommes: conciliation procedure	(arbitration) (National Labor Relations Board, Equal Employment Opportunity Commission)
adjudication	Industrial Tribunal	labour court: judgment procedure	Conseils de Prud'hommes: judgment procedure	
first appeal	Employment Appeal Tribunal (EAT)	State Labour Court (LAG)	Cour d'appel	Court of Appeal
second appeal	Court of Appeal	Federal Labour Court (BAG)	Cour de cassation	Supreme Court
third appeal	House of Lords	(Federal Constitutional Court)		

We find separate labour courts on the first level of adjudication in Great Britain, West Germany and France. A difference can be observed with respect to conciliation which is conducted by a

separate institution (ACAS) in Britain whereas it is the first phase of the labour court procedure in France and in Germany. The German labour court system is totally independent from the ordinary judiciary whereas appeal in the British and the French system leads into the ordinary judicial system (in France, first appeal goes to the cour d'appel; in Britain, first appeal still rests with a labour court (EAT) while second appeal goes to the ordinary Court of Appeal). The third "appeal" to the German Federal Constitutional Court is put in brackets because it is not considered to be a normal appeal but rather considered a right of the citizen to be protected against unconstitutional acts i.e. of the BAG. This appeal does not prevent enforcement of the BAG decisions; the number of cases admitted to be heard by the Constiutional Court is comparable to the number of labour law cases in the House of Lords.

The United States have no labour court system; only to a limited degree do private arbitration and quasi-judicial administrative agencies perform functions of employment protection. Arbitration is usually carried out within the company as the last step in the grievance procedure. Review of arbitration awards through normal courts is generally excluded.

The oldest American quasi-judicial body performing employment protection tasks is the National Labor Relations Board. It is characterized by a dual organizational structure: on the one side an investigative and prosecutive section (General Counsel) which

independently investigates the facts in an "unfair labor practice" case (e.g. in a case of discharge related to union membership); after investigation the General Counsel prosecutes the employer. Prosecution leads to a hearing within the National Labor Relations Board. This hearing is organized by the second organizational section, the Board. The Board consists of the national board and and so-called Administrative Law Judges who conduct the hearings. Internal review of decisions of these judges lies with the Washington Board. Afterwards appeal goes to the Federal District Court of Appeal and then to the Supreme Court.

Before we ask specifically about meso-corporatist structures in labour conflict institutions we can present available data on outcomes and success rates in the Industrial Tribunal, the conseil de prud'hommes and the labour court. In all four systems do we find workers to be plaintiffs in more than 90 per cent of the cases.

Table 1: Outcomes and Rates of Re-employment of the Industrial Tribunal System, of the German Labour Courts and of the conseil de prud'hommes in Unfair Dismissal Cases

	Great Britain (1981)	Germany (1978)	France (1979)
settlement	31%	60%	16%
withdrawals and abandonments	32%	26%	31%
decision	37%	14%	53%
appeal against decisions	5%	49%	57%
success of the applicant in the decision	23%	50%	-
out of all applications: actual re-employment	0.3% (IT) 1.3% (ACAS)	9%	-
	(N=36.276)	(N=97.164)	(N=106.210)

Sources: Department of Employment Gazette (Dec. 1982) p. 520. Falke et al. 1981, Vol.II, p. 974, Uebersicht 4; Rhode 1983, pp. 192/3, Uebersicht 3. Ministere de la Justice (1981) Annuaire Statistique de la Justice 1979, p. 75; Moritz 1984, p. 76.

The adjudicatory function of the German labour court judge in unfair dismissal cases seems rather limited. Only 14% of the cases are contested in a hearing and need a decision (streitiges Urteil). 60 per cent are settled in court, either in a separate conciliation procedure (Gueteverfahren) or in a judgment procedure. The rest are withdrawals or summary judgements i.e. judgments in cases where either one or both parties did not appear before court and the judges gave their brief opinion on the case

without a full hearing. Judicial procedures rarely grant re-employment; in a situation where the employment relationship is broken, judicial procedures can usually only force the employer to pay a higher compensation and thereby increase -- not only symbollically -- the cost of dismissal.

The British figures show a higher percentage of cases which get a decision (37%). If a case reaches the level of an IT hearing, the serious attempts to settle the case by conciliation seem to stop. Almost all cases which get a hearing also get a decision.

Looking at rates of success of the applicants in decisions, one finds that less than a quarter (23%) of the British applicants are successful at a hearing which means only 8.6 per cent of all applications are successful in the Industrial Tribunal system.

The rate of success for the applicant in decisions of German labour courts is about 50 per cent. If we include compensation reached by settlement in court it rises to about 75% (Rhode 1983, p.193, Uebersicht 3, Teil 2). It pays to go to court for three quarters of the applicants in Germany; in Britain less than 50% get any form of redress by invoking the tribunal system (at the ACAS stage British applicants seem more successful than in a tribunal hearing because they usually gain some payments through conciliation).

The French data show a high figure of rendered decisions (53%). The obligatory separate conciliation procedure of the conseil (Bureau de conciliation) seems not very successful; and, in

addition, the opportunity to reach settlement in the judgment procedure , as it is practice in German labour courts, is not widely used although legally possible (see Javillier 1981: 592). If we look at individual labour courts we find significantly different distributions because of the already mentioned local character of each conseil. Cam (1981, tableau 6, p. 124) draws his data from only one conseil (Nantes) and he reports even higher figures on decisions and lower numbers of withdrawals: 77 per cent were decisions, but only 6 per cent were withdrawals and 14 per cent were settled in Nantes. Moritz (1984: 75) reports rather similar figures to the national figures from another conseil (Toulon).

Significantly different are figures for appeal. Germany and France show high figures of appeal. In France, appeal goes to the ordinary cour d'appel. If we remember the already high number of decisions one is tempted to view the high number of appeals (57%) as an overall reduced acceptance of the conseils by the parties. But Moritz (1984: 76) rejects this interpretation by pointing at the divergent structure of the lay court conseil and the legal character of the ordinary appeal courts which, in his understanding, invites appeals. In Germany, the number of decisions are small and cases that get a decision are more often about legal conflicts and therefore have a higher inclination for appeal.

In Britain, the low number of appeals might express the fact that Industrial Tribunal hearings are already processing labour conflicts in a legalized way; in addition, there are filters for appeal such as application with the tribunal within a certain time period; and appeal is only possible on an error of law not on an error of fact. France and Germany allow a trial de novo.

In all three countries the appeal bodies are considered to lean somewhat towards the employer side in their decision-making.

4. Meso-Corporatist Arrangements in Labour Conflict Institutions

We shall analyze participation of collective interest groups in institutions of employment dispute resolution on three levels: (1) appointment of professional judges; (2) lay judges; and (3) legal representation through associational professionals.

(1) Appointment of Professional Labour Court Judges

Professional labour court judges can be found in Britain and in Germany. But only in Germany the appointment procedure is characterized by a stable meso-corporatist arrangement. German labour court judges are nominated by the Minister of Labour of a State (Land) (and not the Minister of Justice as for judges in the ordinary judiciary). During the nomination process a tripartite committee consisting of an equal number of members from the unions, the employer associations and the labour courts have to be consulted (par. 18 (1) of the German Labour Court Act). Since 1960, German labour court judges have to be "full" jurists which means that they hold the obligatory two law degrees and therefore formally qualify as normal members of the German legal profession. The selection process by the Ministry of Labour allows young lawyers with some extra qualifications in labour law and

industrial relations studies to be successful in the nomination procedure.

In Britain judges are called chairmen of the Industrial Tribunals. They have to be former barristers or solicitors of at least seven years standing, but often they are at the end of their career as private lawyers. They are appointed, as all other judges in England and Wales, by the Lord Chancellor. Early in 1982 there were in post 65 full-time and 105 part-time chairmen (figures of the Central Office, Fact Sheet, July 1982, p.1). There is no direct influence of interest groups on the appointment of IT-chairmen; this fact might be part of the explanation why continental observers find that Industrial Tribunal chairmen stick to rather traditional and learned views with respect to procedures and interactions in the court room (see Blankenburg/Rogowski 1984).

Appointment of arbitrators in the United States is done by the disputing parties and is usually carried out separately for each case (few collective bargaining agreements provide for permanent arbitrators). Arbitrators are selected from lists with usually 5 or 7 names from which the disputing parties alternately strike names until one arbitrator is left. A residual meso-corporatist arrangement can be seen in the fact that these lists are in roughly half of the cases provided by the official Federal Mediation and Conciliation Service.

(2) Lay judges

Lay judges in Britain and in Germany are nominated in consultation with trade unions and employer associations. Lay judges in Germany are nominated for four years from lists provided by employer associations and unions. In Britain, lay judges are appointed to panels usually for three years. From these panels the lay judges are appointed separately for each hearing by the Regional Chairman of the respective tribunal (Hepple/O'Higgins 1981: 777, p. 365). Participation of lay judges in hearings generally tends to be low in Germany as well as Britain. The German professional judge who studied the case from written documents before the hearing seems to have therefore strategic advantage over lay judges who learn about the case from the professional judge only shortly before the hearing.

British lay members are more or less in the same situation as their professional chairmen of having little information about the case from documents before the hearing; their influence in the back room after the hearing might therefore be regarded higher than the influence of German lay judges although little empirical evidence of actual influence of lay members on outcomes has been produced until now (with the exception of data gathered by Dickens 1983 on the British case).

In a recent comparison of contributions of French and German lay judges in labour adjudication, K. Moritz (1984: 70) distinguished

three models of courts with lay participation: (1) expert courts, (2) lawyer courts, and (3) mixed courts. In expert courts lay judges play a dominant role because decision-making follows particularistic social norms rather than legal norms. The reversed is true for the lawyer courts whereas mixed courts try to keep the balance. But neither the French nor the German labour court was following either the supposed expert or the mixed model. Moritz found that the conseil acts rather more like a committe of general representatives than as an expert body and that issues tend to be legalized rather than conciliated. And he furthermore found that the German labour court was not a balanced body of legal and industrial relations expertise. Its activities were dominated by the professional judge seeking quick settlement rather than intensive conflict resolution (this was also the finding of Blankenburg/Schoenholz/Rogowski 1979; 152-7).

(3) Legal Representatives of Associations

In questions of representation of the parties the German labour court, the Industrial Tribunal and the conseils de prud'hommes are quite liberal. Apart from lawyers, trade union representatives and representatives of employer associations and also other representatives are allowed in court. And the party can decide not to be represented and can defend his/her case alone in the courtroom.

Table 2: Distribution of Representatives at Hearings

	Industrial Tribunal (1981)		Labour Court (1978)		Conseil de prud'hommes (1970)
	applicants	respondents	applicants	respondents	applicants
self-represention or internal representative	45%	52%	15%	23%	45%
legal representative	23%	41%	52%	48%	30%
trade union or employersù association representative	24%	5%	30%	29%	20%
other representatives	7%	2%	3%	-	5%
	(N=596)	(N=443)	(N=713)	(N=697)	(N=not known)

Sources: Britain: Dickens et al. 1984: 510, Tabble 3
Germany: Falke et al. 1981, Vol.II, p.627, Tab. IV/57 and p.647, Tab.IV/66.
France: Cam 1981: 125, tableau 8 (except for "femmes, ouvrieres" where data are inconsistent)

Slightly higher figures of involvement of associational representatives can be found in Germany; but even here they participate in less than a third of the cases. Schoenholz (1984) found that German labour court cases in which legal representatives were involved showed a higher rate of decisions than other cases. Cases in which union representatives were involved showed the highest rate of conciliation.

Although measures of quality of representation are hard to establish in interviews with clients and judges, associational representation in Germany is generally regarded as better than representation by lawyers. One reason may be the fact that labour

court cases do not pay well for lawyers in Germany; in addition, associational representatives are repeat players who can acquire special knowlegde of their court and often are involved in the informal networks of these special courts (see Blankenburg/ Schoenholz/Rogowski 1979: 157-162).

In our observation of Industrial Tribunal hearings we found trade union representatives widely accepting the adversarial style of procedure of the ordinary courts. Although procedural law does not prescribe the use of an adversary procedure in the tribunals the combined expectations of the former barrister-chairman and the legal representatives allow little opportunity for informality from the parties side and their associational representatives; a move towards legalism and 'adversariness' in British Industrial Tribunals therefore seems almost unavoidable (see Blankenburg/Rogowski 1984).

The relatively high number of self-representation in France (45%) might be related to an image of conseils as an informal body of lay judges.

Conclusions

Meso-corporatism as a concept of political cooperation of state agencies and associations on a middle level of politics was used in our analysis of judicial employment conflict resolution in two respects: First, we analyzed corporatist cooperation in the establishment process of employment protection institutions. Second, we compared meso-corporatist arrangements in organizational structures of these institutions.

We found different degrees of tripartite cooperation in political processes leading to the establishment of institutions of employment protection. Apart from industrial relations policies, the interests of the state were thereby often shaped by interests of the legal profession and the judiciary. In the United States, the argument that specialized courts are alien to the American judicial system is used to actually prevent courts with meso-corporatist arrangements. In France, the bipartite conseils are generally treated as creatures of the industrial relations sphere; although formally part of the civil judiciary, a hierarchical control is guaranteed through judicial review which is widely used (more than 50 per cent of the conseil decisions get appeal in the ordinary judiciary). In Britain, the compromise was to call the labour judiciaries tribunals and not courts. "Real" courts are allowed to review tribunal decisions. And in Germany, the legal profession insisted from the beginning of the labour courts that

only lawyers could become professional labour court judges. It took them until 1960 to be successful.

Nevertheless, it is still remarkable how much influence interest groups can exercise in official employment protection even beyond their involvement in grievance procedures at company level; and this is true for France, Germany as well as Britain. Compared with general accounts of (national) corporatisms, the presented results on meso-corporatist arrangements are more or less affirming. The United States always show low rates of corporatism while Germany usually ranks quite high on a corporatism scale (see Schmitter 1981). Only slightly inconsistent seem our findings for Britain; this country generally shows low patterns of corporatism whereas the Industrial Tribunals are clearly characterized by a meso-corporatist structure.

In a second step, we compared meso-corporatist arrangements within labour conflict institutions more concretely. We distinguished three levels: appointment of professional judges, lay judges and represention by associational professionals. The following Chart 2 can summarize our findings.

Chart 2: Meso-Corporatist Arrangements in Institutions of Employment Conflict Resolution

Levels	Great Britain	West Germany	France	United States
	Industrial Tribunal	Labour Court	Conseil de prud' hommes	Arbitration hearings
Appointment of professional decision-makers	Home Office, no participation of interest groups	Tripartite Commission at the Department of Labour	No professional judge	Appointed by the disputants from FMCS and AAA lists
Lay judges	One from each side	One from each side	Eight lay judges	No lay judges
Legal representatives	associational and lawyer representatives allowed	associational and lawyer representatives allowed	associational and lawyer representatives allowed	associational and lawyer representatives allowed
Grievance procedures	established under collective bargaining agreements	works council involvement by statute	involvement of factory council and of the inspecteur du travail	established under collective bargaining agreements

Information on grievance procedures are included because they are important filter institutions for labour courts which already provide the possibility of collective interests to be introduced in individual employment conflicts. Probably the furthest going filter system exists in France; the obligatory involvement of the administrative inspecteur du travail before any dismissal establishes a strong preventive system. Especially for Britain it has often been stated that a major effect of introducing a judiciary for labour conflicts lies with its impact on the establishment of grievance procedures at company level (see Hepple

1983). In this perspective, labour judiciaries are also designed to foster collective bargaining.

With respect to our question of meso-corporatist arrangements in the organizational structure of labour courts, we can see from our chart that Germany has arrangements on all three levels. In British Industrial Tribunals we find them only on the level of lay judges and associational representatives whereas French conseils are characterized by meso-corporatist arrangements on the level of representation; the bipartite bench of lay judges in the conseil is elected locally; but in cases of impasse in decision-making we find a residual tripartite structure in that a professional judge may be called in to overcome the deadlock.

We can conclude that collectivce bargaining is related to corporatism insofar as processes of collective bargaining contribute in establishing and in promoting institutions -- judicial as well as administrative -- in which representatives of interest groups participate in everyday decision-making of welfare institutions of the state. Institutionalized collective bargaining under the surveillance of the state is a pattern which not only underlies labour conflict resolution in most Western European countries but is taken as characteristic of whole political systems which therefore are called neo-corporatist. And it seems a major virtue of a concept like meso-corporatism that it is able to emphasize the links between cooperation and collective bargaining in labour conflict resolution with global political processes.

Footnotes

1) Intra-associational problems found special attention in Germany; see Streeck 1981; Heinze 1981 and from a legal point of view Teubner 1978.

2) Bercusson (1984) distinguishes local bargaining between the employer and an individual worker and bargaining of the employer and a group/organisation of workers; the latter he calls the meso-level of bargaining. This distinction might be appropiate for an analysis of wage determination; but for our purposes we shall refer to bargaining only as collective bargaining and, therefore, we shall call the sectoral or regional level our level for meso-corporatism. See also Teubner 1983: 26/7.

3) As early as 1907, Hugo Sinzheimer, often called the founder of German labour law, developed a theory of collective bargaining agreements which he called corporate labour norm contract (korporativer Arbeitsnormenvertrag). Sinzheimer conceptualized collective bargaining as a tripartite process. But the inclusion of the state was not central for Sinzheimer's pre-World-War-I concept of collective bargaining; rather the fact that unions gained protection and recognition from corporatist structures (See Sinzheimer 1907/8).

4) It is well known that experts like Hugh Clegg, the industrial relations specialist, and especially Otto Kahn-Freund had a major impact on the final draft of the moderate Donovan report. Otto Kahn-Freund who already took an active part in the labour law development of the late Weimar Republic and who had to emigrate to England after 1933, was considered the leading British labour lawyer in the 1950ies and the 1960ies (See Wedderburn 1983 and Clegg 1983). And one has to admit that the chapter of the Donovan Report on Labour Tribunals reads like an attempt of a former German labour lawyer to adjust the labour court model to the British industrial relations.

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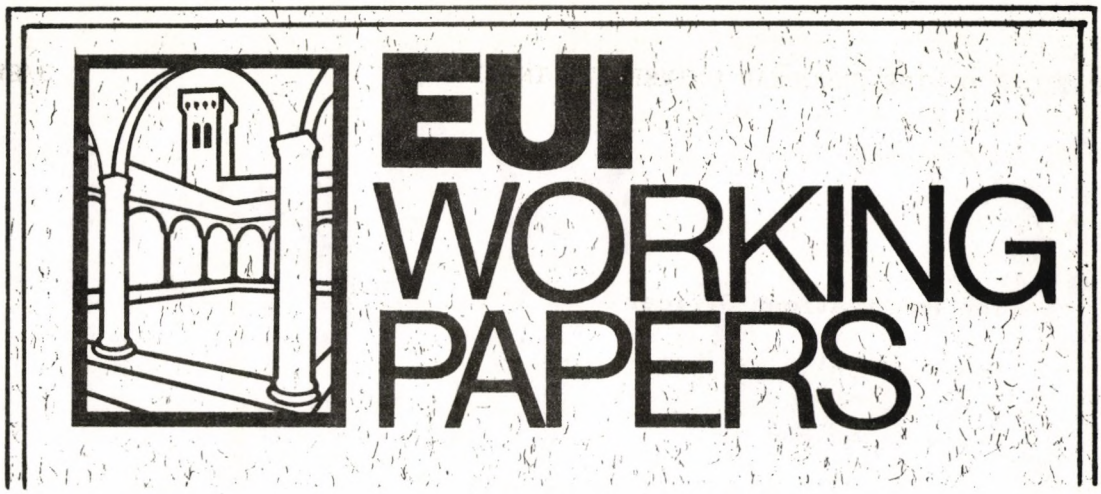

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